

010251983

RONALD HOROWITZ

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*Attorney for Execution Judgment Creditor, Alliance Shippers, Inc.
Our File No. 2671*

U.S. BANKRUPTCY COURT
FILED
NEWARK, NJ

2018 JAN -3 P 2:02

CLERK OF COURT

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

BY:  ELIZABETH J. HELLER

IN RE:

JOSEPH T. GUARRACINO AND YVETTE
L. GUARRACINO,

Debtor.

Chapter 7

Case No. 14-30441-SLM

Adversary No. 14-02069-SLM

**OPPOSITION TO PROPOSED
COMPROMISE OR SETTLEMENT OF
COMPROMISE**

HEARING DATE: 01/09/18 at 10:00 am

1. I represent Alliance Shippers, Inc. ("Alliance"), which is an execution judgment creditor of both non-debtor, GFP Distributors, Inc. ("GFP") and the individual debtor, Joseph Guarracino ("Guarracino"). Alliance's **secured** claim is in excess of \$300,000.00.
2. Based on the purported investigation by the Trustee, he incorrectly determined that the debtor had an interest in a 1999 International Truck.
3. Early on in this case, Alliance, through its counsel, filed a Notice of Appearance and Request for all Papers Submitted (Doc. #7).
4. Notwithstanding the filed Notice of Appearance, which was served on the Trustee, the Trustee moved *ex parte* for an order compelling the turn-over of the said truck. Thereafter, the Trustee, again, *ex parte*, moved for an order authorizing the sale of the truck. However, this truck was in the title of GFP and never the debtor individually.
5. Notwithstanding the evidence, the Trustee proceeded to conduct an auction sale of the truck, yielding a reported sum of \$2,500.00.

6. Alliance moved for reconsideration of all orders concerning this truck. By Opinion dated April 12, 2017, this Court found as follows:

“The court finds that the 1999 Truck is an asset of GFP, and must be used to pay liabilities of GFP first. After the satisfaction of GFP’s corporate liabilities, any surplus from the sale of the 1999 Truck will become an asset of Mr. Guarracino’s estate.” (Doc. #149)

7. Prior to the motions and auction sale of the truck, referenced above, Alliance had instituted an adversary proceeding against Guarracino to declare as non-dischargeable the judgment debt under 11 U.S.C. §523.

8. The adversary proceeding was tried. On October 16, 2017, this Court issued a comprehensive opinion awarding judgment in favor of Alliance together with a subsequent award of counsel fees. In the October 16, 2017 Opinion, this Court held:

“Further, under PACA, the produce seller’s claim for payment has a higher priority than the buyer’s perfected, secured creditors... Idahoan Fresh vs. Advantage Produce, Inc., 157 F.3d 197, 199 (3d Cir. 1998).” (Doc. #29)

This Court’s holding was based on the 1984 amendment to PACA to include a floating trust provision.

9. Hence, based on long-standing PACA Law, Alliance’s super priority claim takes priority over the purported secured claim of the Division of Taxation. Consequently, Alliance is entitled to be paid first from the proceeds of the auction sale of the truck. The purported administrative claims for auction fees, attorney fees, appraisers fee and titles fees should not be paid from sale proceeds of property that was never a part of the debtor’s estate. Furthermore, the Trustee’s purported legal fees should likewise not be paid from the sale proceeds. Otherwise, he would be rewarded for improperly causing the sale of property that was never a part of the estate. Before the auction sale, the Trustee was on express notice of Alliance’s position that the truck was not part of the estate.

10. In April 2017, Alliance attempted to reconcile that the expenses incurred to sell the truck so that proceeds could be distributed. Annexed as Exhibit "A" are correspondence between myself and the Trustee. The Trustee never mentioned a purported secured claim held by the Division of Taxation. Nevertheless, that claim, even if valid, is subordinate to Alliance's PACA claim.

WHEREFORE, Alliance requests that proposed Consent Order not be entered but that an Order be entered compelling the Trustee to turn over to Alliance the entirety of the sales proceeds.

Dated: January 2, 2018



RONALD HOROWITZ, ESQ.

EXHIBIT “A”

RONALD HOROWITZ

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*NJ, NY and FL Bars
Certified By The Supreme Court Of
New Jersey As A Civil Trial Attorney*

April 25, 2017

VIA E-MAIL skartzman@msktlaw.net

Steven P. Kartzman, Esq.

Mellinger Sanders & Kartzman, LLC

101 Gibraltar Drive, Suite 2F

Morris Plains, New Jersey 07950

*Sent via metro.
Email no good.*

**RE: JOSEPH T. GUARRACINO AND YVETTE L. GUARRACINO, DEBTOR
ALLIANCE SHIPPERS, INC. v. JOSEPH & YVETTE GUARRACINO
Case No. 14-30441-SLM
Our File No. 2671**

Dear Mr. Kartzman:

I am in receipt of your outrageous April 24, 2017 letter.

Your April 20, 2017 letter stated that you had to check your file to see if there were "any other costs" incurred in order to liquidate the subject vehicle. Instead of doing that, you prepared a bill for in excess of \$5,000 in purported attorney's fees.

You were on written notice that the issue concerning the sale of the subject vehicle was before the Court on a motion to reconsider. As you further know, the motion was successful. Given the meager amount realized for the sale, you could have deferred the sale until the motion was decided. Moreover, your fees have not been brought before the Court by way of an application to determine their reasonableness, etc. I find them grossly unreasonable.

Since the subject vehicle is not part of the estate, as recently decided by the Court, proceeds of that sale, assuming the veracity of the \$1,365, that is stated in your April 20, 2017 letter, are not subject to the pending bankruptcy case.

Accordingly, should your check for \$1,365 not be received within seven (7) days, an appropriate application for turnover will be made in the state court. You are nothing other than an escrowee for monies of a state court judgment debtor that is not in bankruptcy.

Very truly yours,

RONALD HOROWITZ

RH:cc

Mellinger, Sanders & Kartzman, LLC

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PETER ROSEN
ROBERT D. ROSEN
TERRI JANE FREEDMAN

April 20, 2017

Via Facsimile OnlyRonald Horowitz, Esq.
Attorney at Law
P.O. Box 353707
Palm Coast, FL 32137
Fax: 386-597-1229Re: Joseph T. and Yvette L. Guarracino
Case No. 14-30441 (SLM)1999 International Truck

Dear Mr. Horowitz:

In addition to the expenses incurred to sell the 1999 International Truck detailed in my letter to you of April 20, 2017, the bankruptcy estate incurred legal fees to my firm directly related to the sale of the two trucks sold at auction. Enclosed herewith is a bill for services directly related to the auction sale, including the time required to get the Debtor to turn over the vehicles, to retain the appraiser and auctioneer, to prepare the motion to authorize the auction and, the motion to direct the MVC to accept the Trustee's signature on a duplicate title and accept the Court's Order as a lien release letter. As you can see, the services exceed the sum of \$5,400. Allocating half of that sum to the 1999 International produces a figure of \$2,700.

Given that the net proceeds of the auction sale amounted to \$1,365 (as detailed in my letter of April 20, 2017), and that the services required to accomplish the sale and clear the title come to at least

April 24, 2017

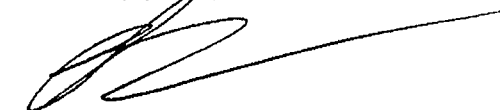
Page 2

\$2,700, there is no remaining equity in the 1999 International. I also note that there are four claims on the Claims Register against GFP, which total \$47,186 (Claims 3, 7, 10 and 11), in addition to Alliance's claim.

Please confirm that Alliance is not asserting a lien on or ownership of the proceeds of the sale of the 1999 International in light of these facts.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven P. Kartzman", with a long horizontal flourish extending to the right.

Steven P. Kartzman

SPK/aja
Enclosure

**Mellinger, Sanders & Kartzman
REVIEW STATEMENT**

Joseph and Yvette Guarracino

PAGE 1
BILLING DATE: 04/19/2017

ACC'T NO.: SK-14-30441
Held For S E P Excerpt of Bill
CODE/RATE: 1 A

RE: MSK Time

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	AMOUNT
08/13/2015	Review file and prepare turnover motion (1), subpoena (.1), and motion to compel (.4)	NC	1.50	382.50 H
10/13/2015	Review file, motions and preparing notes in anticipation of mandatory hearing	NC	0.70	178.50 H
10/13/2015	Participating on hearing re: motions to compel, and turnover; Office Conference with SK re: orders regarding same.	NC	0.50	127.50 H
11/09/2015	Prepare application to retain appraiser	SK	0.30	118.50 H
11/13/2015	File and serve application to retain appraiser	SK	0.20	79.00 H
11/19/2015	Prepare application to retain auctioneer	SK	0.20	79.00 H
11/23/2015	File and serve application to retain auctioneer	SK	0.20	79.00 H
11/24/2015	Serve order retaining appraiser	SK	0.10	39.50 H
12/10/2015	Serve order retaining auctioneers	SK	0.10	39.50 H
12/14/2015	Reviewed file and prepared motion and related pleadings to sell property of the estate at public auction	JZ	3.60	1,206.00 H
12/30/2015	Request issuance of duplicate title to truck and call DAG when MVC refused to issue	SK	0.60	237.00 H
12/30/2015	Draft language for Consent Order directing MVC to accept trustee signature on titles	SK	0.20	79.00 H
02/08/2016	Reviewed file to prepare for Court Appearance on contested motion to approve sale trucks	SK	0.60	237.00 H
02/08/2016	Travel to Court	SK	0.80	316.00 H
02/09/2016	Court Appearance on contested motion to auction trucks, including (court break to read cases cited .3)	SK	1.60	632.00 H
02/10/2016	Preparation of proposed order authorizing sale of trucks	JZ	0.60	201.00 H
02/11/2016	Preparation of motion, related pleadings and application on shortened time re: DMV and clear title	JZ	1.80	603.00 H
02/12/2016	Review and revise motion to direct to accept order as lien release letter	SK	0.20	79.00 H
02/17/2016	TCW J. Jaremback from the A.G.'s office re: today's hearing and the language of the proposed order	JZ	0.20	67.00 H
02/17/2016	TCW J. Jaremback re: additional issues with the proposed order and steps re: obtaining new title based upon discussions with MVC	JZ	0.20	67.00 H
02/17/2016	At the Bankruptcy Court in Newark for hearing on DMV motion	JZ	0.50	167.50 H
02/17/2016	To and from Bankruptcy Court in Newark	JZ	1.20	402.00 H
	Total of New Services		15.90	5,416.50 H

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PLEASE RESPOND TO:
MORRIS PLAINS

FAX TRANSMITTAL COVER LETTER

DATE: April 24, 2017

TO: Ronald Horowitz, Esq.

FAX NUMBER: 386-597-1229

FROM: Steven P. Kartzman, Esq.

FAX OPERATOR: Angie

FILE NAME: Joseph T. And Yvette L. Guarracino, Case No. 14-30441 (SLM)

TOTAL NUMBER OF PAGES TRANSMITTED (including cover sheet): 4 pages

COMMENTS/SPECIAL INSTRUCTIONS:

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PLEASE RESPOND TO:
MORRIS PLAINS

April 20, 2017

Via Facsimile Only

Ronald Horowitz, Esq.
Attorney at Law
P.O. Box 353707
Palm Coast, FL 32137
Fax: 386-597-1229

Re: Joseph T. and Yvette L. Guarracino
Case No. 14-30441 (SLM)

1999 International Truck

Dear Mr. Horowitz:

Enclosed are copies of the Auctioner's Report of Sale, Notice of Proposed Auctioneer Compensation, and Certification of No Objection. Based on same, the analysis is as follows:

\$2,500 Gross Auction Proceeds

- 250 Auctioneer Fees

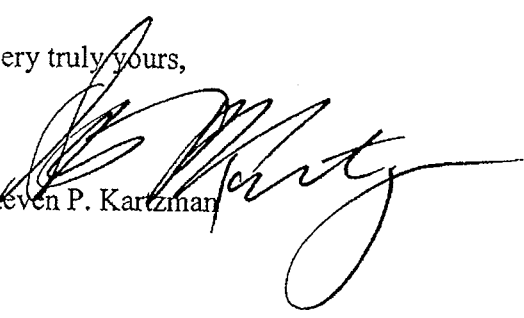
- 450 Towing

\$1,800 Net Auction Proceeds

Additionally, prior to the auction, in order to be able to conduct the auction, the trucks were appraised. The appraiser's fee was a total of \$750. Enclosed are copies of the appraiser's fee application and the Order allowing fees. Half of \$750 comes to \$375. Further, the Motor Vehicle Commission was paid \$60 for a duplicate title for this truck. Accordingly, the net proceeds of sale equal \$1,365. Those proceeds are being held pending a resolution of Alliance's claim.

Next I need to review my files to see if there were any other costs incurred in order to liquidate the 1999 International truck. Once I complete that review, I will be back in touch as to how we can expeditiously resolve Alliance's claim.

Very truly yours,


Steven P. Kartzman

SPK/aja
Enclosures

Mellinger, Sanders & Kartzman, LLC

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FAX OPERATOR: Angie

FILE NAME: Joseph T. And Yvette L. Guarracino, Case No. 14-30441 (SLM)

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*NJ, NY and FL Bars
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New Jersey As A Civil Trial Attorney*

April 19, 2017

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**RE: JOSEPH T. GUARRACINO AND YVETTE L. GUARRACINO, DEBTOR
ALLIANCE SHIPPERS, INC. v. JOSEPH T. GUARRACINO AND
YVETTE L. GUARRACINO
Case No. 14-30441-SLM
Our File No. 2671**

Dear Mr. Kartzman:

In March 2016, the Court entered an Order directing the Trustee to sell the 2005 Mitsubishi and 1999 International trucks. I have not seen a disposition of those sales, particularly the amount realized from each.

As you know, the Court's recent Order and Opinion directed the proceeds of the 1999 truck be placed in escrow.

Therefore, please provide me with whatever documents you have showing the sale of the 1999 vehicle and the proceeds thereof. I will also need to see proof that the proceeds are being held in your trust account.

If you decide to respond by mail, please note my new mailing address above.

Very truly yours,

RONALD HOROWITZ

RH:cc

RONALD HOROWITZ

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U.S. BANKRUPTCY COURT
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January 2, 2018

VIA FEDERAL EXPRESS

Honorable Stacey L. Meisel
United States Bankruptcy Court
M.L. King, Jr., Federal Building & Courthouse
50 Walnut Street, 3rd Floor
Newark, NJ 07101-1352

**RE: JOSEPH T. GUARRACINO and YVETTE L. GUARRACINO, DEBTOR
ALLIANCE SHIPPERS, INC. vs. JOSEPH T. GUARRACINO AND
YVETTE L. GUARRACINO
Case No. 14-30441-SLM
Adversary No. 14-2069-SLM
Our File No. 2671**

Dear Judge Meisel:

Attached please find my Opposition to Proposed Compromise or Settlement of Compromise.

Respectfully submitted,


RONALD HOROWITZ

RH:jar

Encl.

cc: Steven P. Kartzman, Esq. (via email: skartzman@msklaw.net)